

head of the agency in accordance with § 124.320(b).

§ 124.316 Contract administration.

(a) SBA may delegate, by the use of special clauses in the prime contract and subcontract, certain responsibilities for administering an 8(a) subcontract to the procuring agency.

(b) SBA may delegate to the procuring agency all subcontract administration functions except the following: the approval of novation agreements (48 CFR 42.302(a)(25)); and all matters pertaining to advance payments approved by SBA.

[54 FR 34712, Aug. 21, 1989, as amended at 55 FR 34903, Aug. 27, 1990]

§ 124.317 Performance of contracts by original 8(a) concern.

(a) Subject to the provisions of paragraph (b) of this section, a contract (including options) awarded pursuant to section 8(a) of the Small Business Act on or after June 1, 1989 shall be performed by the concern that initially received such contract. If the owner or owners upon whom eligibility was based relinquishes ownership or control of such concern, or enters into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government. In such a case, repurchase costs or other damages cannot be assessed against the concern due solely to the provisions of this paragraph. This provision applies whether the concern that initially received 8(a) certification remains a separate legal entity after a transfer of ownership or whether the concern merges into or is acquired by another business concern.

(b) The Administrator may, as a matter of discretion and on a nondelegable basis, waive the requirements of paragraph (a) of this section if requested to do so by the original 8(a) awardee if any of the following conditions exist:

(1) When it is necessary for the owner(s) of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing;

(2) Ownership and control of the concern that is performing the contract will pass to another Program Partici-

pant, but only if the acquiring firm would otherwise be eligible to receive the award directly as an 8(a) contract;

(3) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity of death; and

(4) When, in order to raise equity capital, it is necessary for the disadvantaged owner(s) of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(i) Such concern has exited the 8(a) program;

(ii) The disadvantaged owner(s) will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(iii) The disadvantaged owner(s) will maintain control of the daily business operations of the concern.

(c) Requests pursuant to paragraph (b) of this section must be made prior to the relinquishment of ownership and control except in the case of death or incapacity. A request for a waiver under paragraph (b)(4) of this section must be made as soon as possible after the incapacity or death occurs.

(d) A procuring agency may request a waiver of the requirements of paragraph (a) of this section if the head of the procuring agency certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions.

(e) A concern performing an 8(a) contract must notify the SBA in writing immediately upon entering into an agreement or agreement in principle (either oral or written) to transfer all or part of its stock or other ownership interest or assets to any other party. Such an agreement could include an oral agreement to enter into a transaction to transfer interests in the future.

(f) Denial of a waiver request may be appealed to SBA's Office of Hearings and Appeals in accordance with § 124.210 and part 134 of the title.

(g) For the purposes of determining ownership and control of a concern under these regulations, any potential ownership interests (such as options or warrants) held by investment companies licensed under the Small Business